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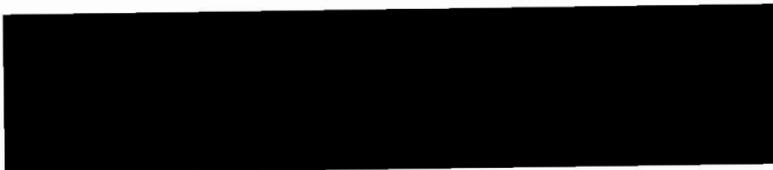
FILE: EAC 02 210 50389 Office: VERMONT SERVICE CENTER Date: JUL 06 2006

IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based visa petition that is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a construction company. It seeks to employ the beneficiary permanently in the United States as a painter. As required by statute, a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor accompanies the petition. The director determined that the petitioner had not established that the beneficiary has the requisite experience as stated on the labor certification petition and denied the petition accordingly.

On appeal, counsel submits a letter.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are unavailable in the United States.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii) states, in pertinent part:

(A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

Eligibility in this matter hinges on the petitioner demonstrating that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The priority date of the petition is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. Here, the request for labor certification was accepted for processing on April 25, 2001. The labor certification states that the position requires two years experience in the job offered.

On the Form ETA 750B the beneficiary claimed to have worked in construction for the petitioner since January of 2001. The beneficiary also claimed to have worked as a painter for two other Virginia firms, from January 1998 to December 1999 and from December 1999 to January 2001.

With the petition counsel submitted a form employment verification letter from one of the beneficiary's previous employers stating that he had employed the beneficiary as a painter from January 1998 to December 1999.

On February 28, 2003, the Vermont Service Center requested additional evidence. The service center noted that, without specific dates, a claim of employment from January 1998 to December 1999 does not necessarily encompass two full years. In response, counsel submitted a revised form employment verification letter from that same employer stating that he employed the beneficiary as a painter from January 2, 1998 to December 1, 1999.

On August 27, 2003, the director denied the petition, finding that the evidence submitted demonstrates less than one year and eleven months of salient work experience.

On appeal, counsel submits her own letter dated August 29, 2003. In that letter counsel argues that the director failed to consider another employment letter submitted attesting to the beneficiary's employment as a painter from December 1999 to January 31, 2000. That letter does not appear in the file and counsel did not provide a copy of it. The assertions of counsel are not evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The evidence submitted does not demonstrate credibly that the beneficiary has the requisite two years of experience. Therefore, the petitioner has not established that the beneficiary is eligible for the proffered position.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.